

DEPARTMENT OF DEFENSE BLOGGERS' ROUNDTABLE WITH JOSEPH BENKERT, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE, GLOBAL SECURITY AFFAIRS (VIA TELECONFERENCE FROM IRAQ) SUBJECT: CLUSTER MUNITIONS AND THE OSLO TREATY MODERATOR: CHARLES "JACK" HOLT, CHIEF, NEW MEDIA OPERATIONS, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE PUBLIC AFFAIRS TIME: 10:00 A.M. EST DATE: MONDAY, FEBRUARY 11, 2008

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MR. BENKERT: Thank you very much.

Well, I appreciate the opportunity to talk to both of you today. I think -- what I would propose to do is I'll say a few things about cluster munitions and the current status of the issue, and then obviously, be happy to take whatever questions you may have.

Is that acceptable for everybody for a way ahead here?

MR. : Sure.

MR. HOLT: All right. Yes, sir. MR. BENKERT: Great. Okay.

I mean, I think all of you are both aware that the issue of cluster munitions has gotten a great deal of attention over the last year or so. I think you all are aware of the fact that last February, a fairly large group of nations met in Oslo to negotiate -- the intent was by the end of this year, 2008 -- a ban on cluster munitions. And obviously, we have serious concerns about that way to address this important issue.

And I want to say up front that the U.S. government, the Department of Defense, share the humanitarian concerns raised by the use of cluster munitions and we want to minimize the humanitarian effects of cluster munitions.

Where we disagree in the process is that we believe that there is a more effective way to do this than through this so-called Oslo process, which is through the Convention on Conventional Weapons -- a standing forum that, in fact, is intended to address this, balancing both military requirements and humanitarian needs.

I would also note that we in DOD have, over the years, made considerable efforts to reduce the risks to civilians from cluster munitions -- or any other weapon, for that matter -- through several things. First of all, obviously, continuing technological efforts to increase the accuracy and reliability of cluster munitions and other weapons so as to minimize any untended -- any unintended damage.

The second is -- I think is, again, you know that we have very stringent targeting processes that take into account the possible risks to civilians and civilian infrastructure and we obviously attempt to minimize that.

And third, after a conflict, we have extensive efforts to clean up unexploded ordinance -- and that's particularly true of cluster munitions where the U.S. is a leader in the effort to clean up an exploded ordinance after a past conflict, such as in Afghanistan.

However, that said, we are of the view that cluster munitions are legitimate weapons that have clear military utility and are likely to have so going forward to the future. And we don't believe that a complete ban on cluster munitions -- which is the direction of the Oslo process -- that a complete ban on cluster munitions is in our national security interests or frankly, that of the international community.

Our concern is that the -- because these weapons have military utility, that a complete ban would put at risk the lives of our soldiers and those of our coalition partners and make it more difficult to fulfill our security guarantees to others. And we believe that -- and I think the evidence is -- that these weapons are well suited for certain types of targets. and for certain types of targets, use of cluster munitions could, in fact, result in fewer civilian casualties and less damage of civilian infrastructure than would be case if the conventional unitary warheads were used against the same target.

I think that -- for example, the a type of target where -- with a dispersed formation of enemy forces where several smaller and fewer sorties by aircraft using cluster munitions would be required to neutralize a target than would be the case for unitary warheads.

We think that there is some -- the accusations are that cluster munitions are indiscriminate. We think that's not true. I mean, any weapon could be indiscriminate -- indiscriminately used, depending on the target process. We think that, obviously, with proper targeting that in fact, cluster munitions are not indiscriminate.

I think it's also important to point out, of course, that if what is missed in the focus on the weapon itself is that -- is the context in which it is used. And if enemy combatants position themselves among the civilian population, any weapon has the potential of causing civilian casualties. I mean, I think it's of concern to us that in the discussions about the weapon, there is not much -- there doesn't seem to be adequate recognition for the fact that these weapons are used in a particular context and there doesn't seem to be an adequate focus on the fact of the practices of the enemies and potential enemies to operate from within civilian populations, which is guaranteed to cause civilian casualties.

The second, I think, criticism of cluster munitions is that they produce duds, which means that there's unexploded ordinance on the battlefield after the weapons are used. And as I said, I think we want to -- we believe that can be addressed first, in part, technologically by improving the reliability of these weapons; but also by a commitment to cleanup the unexploded ordinance after the fact.

Finally, let me just say: I think that we are committed to minimizing the humanitarian effects of cluster munitions. We believe that there is an existing and potentially more effective forum than the Oslo process that

balances military and humanitarian considerations and that's the Convention on Conventional Weapons. And in November of last year, the states parties to the Convention on Conventional Munitions agreed to negotiate a propose to, and this a quote, "to negotiate a proposal to address urgently the humanitarian impact of cluster munitions, while striking the right balance between military and humanitarian considerations." End of quote.

Unlike the Oslo process, all of the major producers and users of cluster munitions are represented in the CCW. And so any resulting instrument from the CCW that these parties agree to is likely to have a much more practical impact than in Oslo. We fully support these efforts in the CCW and are pushing to try to conclude a protocol within the CCW by November of this year -- November of 2008. And that is -- in our view, that's the proper forum with the greatest number of states who are producers and users of cluster munitions and most likely to have the impact. I mean, there is, I think, within the Oslo process a risk that this could become sort of "feel good" arms control where nations which -- a number of nations which either don't have cluster munitions or don't have a particular need for cluster munitions sign up to produce a ban, which would have very little impact on their national security needs, but could have a major impact on the needs of us and our NATO and other allies.

I think I'll stop there. And I think one of you had asked to talk about just some background on what are cluster munitions and I could say something about that, if that's -- I mean, what type -- what we're talking about, if that's of use.

MR. HOLT: Yes, sir. Please.

MR. : Absolutely.

MR. BENKERT: Okay.

Part of our concern here is this is a fairly wide range of systems that are covered. And cluster munitions, there are airdropped munitions -- that is bombs and rockets dropped from aircraft -- and then there are artillery systems, which are both missiles and rocket systems, as well as canon artillery. The munitions that are contained in these applications vary. At the high-end of the technological spectrum are something called censor-fused weapons, where we have a very small number of munitions within a warhead -- maybe on the order of nine or 10 -- but these are very sophisticated weapons that actually have censors and are intended to, as they descend, match themselves up with a particular target like a tank. And obviously, they're very expensive.

On the other end of the spectrum are anti-personnel -- anti- personnel cluster munitions, which would be in some of the weapons -- or for example, in the Army's ATACMS and the MLRS systems -- and where these would be intended to be used against massed troops or large formations of troops in the open and they dispense anti-personnel weapons. And these are the kind that seem to get the most attention internationally, obviously, because they dispense a larger number of munitions.

So there are, you know, on the order of probably 15 or 20 different types of cluster munitions that are in either bombs dropped from aircraft or in either missiles and rockets or cannon artillery.

MR. HOLT: All right, sir.

MR. : Okay.

MR. HOLT: Okay, Jason. You were first online, so why don't you get us started.

Q Good morning, sir.

I appreciate your time on this and I agree with your decision absolutely. I've often thought the same thing about the anti- personnel mines as well.

You mentioned the Oslo process: Is the U.S. government participating in that either as a formal or informal participant?

MR. BENKERT: No. We're not participating in the Oslo process.

And I mean, the reason is -- our concern is that the direction of the process seemed to be toward the complete ban of cluster munitions, rather than something that would make refinements in their use or that would seek to minimize humanitarian effects.

And I think what's, I guess, noteworthy about the Oslo process is you have states who are involved, but also NGOs who are involved. And you mentioned the landmines process, and there are some parallels. You know, at the end of the last decade -- there are some parallels here in the way certain NGOs are playing in this process and trying to drive the states who are participants in Oslo to a complete ban of cluster munitions, rather than just trying to make some changes.

So our concern was that if we -- that participating in this process would eventually lead us to a position where we would, I think, find that we'd have to withdraw from the process. And rather than go through that, our view was: One, this was not going to be a productive process for us; and secondly, that there was a more -- that there was a well-established and better forum for discussing cluster munitions, and that's this Convention on Conventional Weapons.

Now, I think to be honest, I mean, we sort of got a late start in the CCW in actually trying to get the states to agree to a negotiating mandate to go produce a protocol on cluster munitions that would address useful issues. But nonetheless, as I said, I mean, beginning last November the CCW, I think, is fully engaged on this and in our view, that's the proper forum rather than the Oslo process.

Q Okay, thank you.

MR. HOLT: And Richard.

Q Yes. Hi. Good morning, Mr. Benkert.

A question on the politics of this, if I might.

MR. BENKERT: Sure.

Q There is a perception in some circles, that aside from being feel-good, these are also driven by specific anti-American considerations -- i.e., an effort to constrain -- because when you look at the powers, as you've

pointed out, who in fact are going to be affected by this, it really comes down to a handful, normally led by us.

To what extent is this being generated by the anti-American animus of some of the participants in just a blank effort to control U.S. (polit ?), I suppose is the way to put it?

MR. BENKERT: Yeah.

I mean, I think there's an element of that in the Oslo process, but I would not say that was the entire motivation. I mean, I think what you've got here is on the one hand, you had some states -- I mean, this is being led by Norway. So on the one hand, I think you had some states which wanted to do something, you know, productive on cluster munitions and wanted to be more forward leaning than I think they thought they were able to be in the CCW.

But once you start down that path, outside the sort of normal channels -- especially where you bring the NGOs in -- there is obviously the possibility for others, both states and nongovernmental organizations, that have this motivation of trying to restrain the major powers -- and the U.S. in particular -- by placing -- by sort of outlawing certain things.

As I said, obviously, one of the concerns we have is that unlike the CCW -- where there is clearly an effort to balance military requirements and military needs with humanitarian concerns -- in the Oslo process it's all driven by the humanitarian concerns to the exclusion of any real focus on the reason the weapons are going to be used in the first place, which is that there's an enemy and the enemy is doing certain things.

And so I think that -- and I apologize for the sort of long-winded answer to your question -- but I mean, I think that it's the case that there are -- there clearly are groups who wish to restrain U.S. power, who are engaged in this process and helping to -- and probably would, although not publicly, would see this as an effort, as a way to constrain the power of major states.

Q Do I have a -- Jack, can I have a follow-up?

MR. HOLT: Sure. Go right ahead.

Q All right.

Mr. Benkert, assuming that Oslo carries through and that they do propose and pass a complete ban on cluster munitions, let's say, to what extent do U.S. forces -- either individuals, units or the nation itself -- become liable under international law to this? And do they fall under such jurisdictions as the ICC, for example?

MR. BENKERT: Yeah. Let me -- I think we would directly not be liable because we're not states parties to this agreement, but there is an important way that this agreement would affect the U.S., even though we may not be liable to criminal prosecution.

Now, the fact that countries who do -- in the country draft of the Oslo agreement that's circulating, there are provisions which basically would require countries not to provide any kind of assistance to countries who use cluster munitions and would prohibit states who signed the Oslo agreement, whatever it turns out to be, from assisting nonstarter parties in carrying out operations

using cluster munitions -- which would mean, for example, that a NATO ally which signs the Oslo treaty would not be able to operate with us in a NATO operation where we are using cluster munitions. Not only that, they probably wouldn't be able to provide any kind of support -- sort of in headquarters -- and one would expect that these states who sign the Oslo agreement would then criminalize any actions which provided support to any use of cluster munitions. So even though they may not be in a position to try to prosecute U.S. forces, they could prosecute their own if they somehow worked with us in a NATO operation.

So we have really serious concerns about the effectiveness of this treaty, because there are some NATO allies who are participants. We have real concerns about the affect of this treaty on our ability to operate with other allies.

Q I see.

And Oslo, in your view, might trump any obligations they would have under the North Atlantic --

MR. BENKERT: Yeah. Now, that -- right, exactly. That would be an interesting question, but it would seem to me -- I mean, again, just our reading of this. And again, you know, this is a draft. At this point this is a draft. There's another meeting here shortly of the group, of the Oslo process, in Wellington. There's going to be another in Dublin in May. And as I said, their objective is to try to get a treaty or some sort of an international agreement that they all can sign by the end of the year.

So this is still in draft. And there are clearly some countries that are participants who are trying to moderate the process.

But the way that draft agreement is now, it would appear that it would be an international agreement that would in effect require countries to criminalize, to prosecute those in that country who provided any support to the use of cluster munitions.

MR. HOLT: All right. Any other follow-ups? All right.

Mr. Benkert, thank you very much for being with us for the Bloggers' Roundtable.

Mr. Joseph Benkert is the principal deputy assistant secretary of Defense for Global Security Affairs.

Thank you, sir.

MR. BENKERT: I am very happy to do this. And I think this is -- I appreciate, Jason and Richard, your participating in this. And I think this is a very important issue which, unfortunately, tends not to get a great deal of coverage here in its potential impact on us. And we're trying to, I think, stay in front of the issue so that we don't wind up in the very contentious and unfortunate situation that we did in the landmine treaty of 10 years ago or so.

Q Could I ask at least a loaded question, which you don't have to answer? (Laughter.)

MR. BENKERT: You could certainly ask!

Q Is there a sense that current U.S. position on this does have bipartisan support within our own Congress? Or is this somehow seen as a Bush initiative that, say, the loyal opposition might at some point oppose, or you might expect them to oppose based on current statements some of their leadership may or may not have made -- I'm not familiar with that?

MR. BENKERT: Yeah. There's clearly some interest on the Hill in this issue and concern about the humanitarian impact of cluster munitions.

I mean, I don't -- I haven't seen it -- I mean, again, we'll have to see how this goes as we get closer to the end game with the Oslo process in particular. We haven't seen sort of a groundswell of congressional interest in Oslo. And so I think at this point, you know, it probably is the case that we would have a reasonably bipartisan, on the one hand, concern about cluster munitions; but on the other hand, you know, a desire to pursue this in a way that doesn't jeopardize our legitimate military needs.

Q And the reason why I asked, as you I'm sure know better than I, there had been some kaffuffle some months back -- I believe after the '06 -- summer '06 Israel-Lebanon war concerning the shipment of cluster munitions to the Israelis, if I remember that correctly.

MR. BENKERT: Right. There was. That is, in fact, true.

And the Israeli use of cluster munitions in southern Lebanon is one of the cases that international -- some NGOs and others in the Oslo process have cited as the reason you need something like this, which is that, you know, there were unexploded munitions. They were picked up by kids and bad things happened.

And again, one of the things I would point out, of course, is that -- I'm sure that the Israelis would -- was that one of the features of the conflict in southern Lebanon was that Hezbollah was operating intentionally from within the civilian population, which tends to cause civilian casualties, regardless of the type of weapon you use. And I think also that the press reports -- at least the initial press reports following that conflict, sort of -- as far as we can tell -- significantly overstated the number of -- the extent of unexploded ordinance after the fact.

I mean, in some respects, this is a matter of degree and is sort of a minor point. But I mean, the press reports were like millions of unexploded cluster munitions and it was probably more like 100,000 -- but I mean, that's still a lot. That's why I'd say -- it's a matter of degree. And there was -- so yeah, there was concern about this. And there was also some concerns raised about the Israeli targeting practices.

And so that's why I think, you know, one of the things that we want to talk about in the Convention on -- on the CCW as we move forward with this protocol is to try to make -- we believe there is a significant body of customary international law, The Law of Armed Conflict, that applies to the use of these and other weapons that one could refer to in the CCW. And there are best practices among nations that I think both in terms of the use of them, and in technology that I think could also be addressed through the CCW, that would make sense.

Q Is Israel a participant in the CCW?

MR. BENKERT: Yes, they are. Q That's it for me, Jack. Thank you. I probably overstayed my welcome.

MR. HOLT: All right. Anything else -- just as a quick one here? All right.

Mr. Benkert, thank you very much for joining us.

Mr. Joseph Benkert, as I said before, principal deputy assistant secretary of Defense for Global Security Affairs.

Thank for joining us for the Bloggers' Roundtable today, sir.

MR. BENKERT: Thanks to you.

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